

ILLINOIS COMMERCE COMMISSION

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Joint Application for approval of transfer of control and reorganization pursuant to Sections 7-203 and 7-204 of the Illinois Public Utilities Act, and for other relief.

Patrick L. Eudy, President and Chief Executive Officer of ABBH, ABAC and MH, and Eric G. Kaufman, President of GEI and GTC, both presented Direct and Rebuttal Testimony in support of the Joint Application. A. Olusanjo Omoniyi, Policy Analyst in the Telecommunications Division of the Commission; Dianna Hathhorn, Accountant in the Accounting Department of the Financial Analysis Division of the Commission; Phil Hardas, Senior Financial Analyst in the Finance Department of the Financial Analysis Division of the Commission; Mark A. Hanson, Rate Analyst in the Rates Department of the Bureau of Public Utilities, Telecommunications Division of the Commission; and Samuel S. McClerren, Engineering Analyst in the Engineering Department of the

Telecommunications Division of the Commission, each submitted Direct Testimony reflecting their review of the Joint Application. At the conclusion of the October 12, 2005 hearing, the record was marked "Heard and Taken."

II. DESCRIPTION OF JOINT APPLICANTS, PROPOSED TRANSFER OF CONTROL, REORGANIZATION, AND OTHER RELIEF REQUESTED

On May 5, 2005, MH, American Broadband Capital, Inc. ("ABC"), GCI and Eric G. Kaufman entered into a Stock Purchase Agreement (Joint Applicants' Proprietary Attachment 1.1 to Joint Applicants' Exhibit 1.0). After obtaining all necessary regulatory approvals (including this Commission's approval) and upon closing, the transaction will result in a change of ultimate ownership and the right to operate, manage and control GTC. GTC is a small incumbent local exchange carrier subject to this Commission's jurisdiction and regulation. GTC provides service to approximately 1,379 access lines in its Gridley Exchange in Central Illinois.

ABBH is a recently formed corporation under the laws of the state of Delaware. After the closing of the transactions, ABBH will be the holding company that owns 100% of the issued and outstanding stock of ABAC. ABBH is a private company that is owned by American Broadband Communications LLC, which holds a 49% ownership interest; Signal Equity Partners II, L.P., which holds a 27% ownership interest; and various minority shareholders, which collectively hold a 24% ownership interest.

ABAC is a corporation formed under the laws of the state of North Carolina and is an intermediary corporation in the American Broadband corporate structure. ABAC owns 100% of the outstanding common stock of MH.

MH is a recently formed corporation organized under the laws of the state of Delaware. MH will own 77.5% of the outstanding voting capital stock of GEI at the closing of the transactions that are the subject matter of the Stock Purchase Agreements.

GEI is a corporation organized under the laws of the state of Illinois. GEI is presently a holding company that owns 100% of the outstanding shares of capital stock of GTC. GEI is a private company that has 266 shares of issued voting capital stock of which 106 shares are treasury stock. Eric G. Kaufman presently owns 106 of the 160 outstanding shares, or a 66.25% ownership interest in GEI. Eight minority shareholders collectively own 54 shares of the outstanding stock of GEI, for a collective 33.75% minority ownership interest.

Upon closing, pursuant to Joint Applicants' Proprietary Attachment 1.0, MH will be purchasing 70 shares of GEI capital stock from Mr. Kaufman. Pursuant to a separate Stock Purchase Agreement dated June 28, 2005, MH will be purchasing the 54 shares of GEI capital stock collectively owned by all of the minority shareholders of GEI. After the completion of those transactions, MH will own 124 shares of the outstanding capital stock of GEI, or a 77.5% controlling ownership interest. A non-

controlling 22.5% minority ownership interest of GEI will be owned after the completion of the transactions by ABC, which will be purchasing 36 shares of GEI capital stock from Mr. Kaufman pursuant to Joint Applicants' Proprietary Attachment 1.0.

Joint Applicants seek approval, pursuant to Sections 7-203 and 7-204 of the Act, of the transfer and control and reorganization of GTC and the Commission's consent and approval to carry out all actions necessary to effectuate the reorganization and transfer of control of GTC. Joint Applicants also seek authority, pursuant to 83 Ill. Adm. Code Part 250, to maintain a portion of GTC's books and records outside of the state of Illinois. Mr. Eudy testified that following the closing of the proposed transactions GTC will retain its separate corporate identity for the purpose of this Commission's regulation.

Mr. Eudy testified that the American Broadband family of companies was formed in 2001 by a team of managers with more than 120 years of management experience with rural and urban telephone companies, including FairPoint Communications, Frontier Corporation, CenturyTel, Centel, ALLTEL, Sprint/United and CP National. He further testified that American Broadband will be focusing on providing telephone, broadband Internet, video and other advanced communications services in rural areas of the United States and stated that it is the belief of the management team at American Broadband that communications networks would be a key determinant in the prosperity and growth of rural communities. American Broadband is acquiring small network operators, such as GTC, as a platform for their broadband strategy. Mr. Eudy testified that American Broadband intends to continue to develop the level of advanced services in the areas served by its operating companies and will provide its operating companies with the resources and economies of scale to survive and prosper.

Mr. Eudy testified that affiliates of ABBH, ABAC and MH currently control and are responsible for the operations of Georgetown Telephone Company, which provides services to approximately 400 access lines in the state of Mississippi; Oregon Farmers Mutual Telephone, which provides local exchange telecommunications services to approximately 1,400 access lines in the state of Missouri; Pymatuning Independent Telephone Company, which serves 2,500 access lines in the state of Pennsylvania; and S&A Telephone Company, which serves approximately 1,000 access lines in the state of Kansas. Mr. Eudy testified that GTC is presently a well-managed incumbent local exchange carrier providing reliable telecommunications services to its customers and that the community and Gridley's existing customers will benefit by being a part of the American Broadband family of companies.

Mr. Eudy introduced into evidence Proprietary Attachment 1.2 to Joint Applicants' Exhibit 1.0, a Pro Forma Consolidated Balance Sheet for ABBH reflecting ABBH's financial situation immediately after the closing of the Stock Purchase Agreements. He further testified that a cash reserve is being maintained for capital investments to be made over the next three years.

III. COMPLIANCE WITH SECTION 7-204 OF THE ACT—THE JOINT APPLICATION AND JOINT APPLICANTS’ DIRECT TESTIMONY

The transactions described in the Joint Application and summarized in Section II of this Order constitute a “reorganization” as that term is defined in Section 7-204 of the Act, and therefore requires approval of the Commission pursuant to Section 7-204. Section 7-204 of the Act establishes specific criteria for the Commission’s review and approval of a “reorganization” and lists specific determinations that the Commission must make in order to approve a reorganization. Section 7-204(b) states that the Commission shall not approve any reorganization if the Commission finds that the reorganization will adversely affect the utility’s ability to perform its duties under the Act. Section 7-204(b) further states that in reviewing any proposed reorganization, the Commission must find that:

- (1) the proposed reorganization will not diminish the utility’s ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
- (2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;
- (3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;
- (4) the proposed reorganization will not significantly impair the utility’s ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
- (5) the utility will remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities;
- (6) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction;
- (7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

Finally, Section 7-204(c) states that the Commission shall not approve a reorganization without ruling on (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.

In the Joint Application and in the Direct Testimony of Mr. Eudy, Joint Applicants represent that the proposed reorganization will be in compliance with the requirements of Section 7-204(b). With respect to the requirement of Section 7-204(b) that “the Commission shall not approve any reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility’s ability to perform its duties under the (Public Utilities) Act”, the Joint Applicants state that nothing in the proposed reorganization will adversely affect GTC’s ability to perform its duties under the Act. Mr. Eudy testified that the reorganization involves MH acquiring the majority and controlling stock ownership interests in GEI, which in turn owns 100% of the outstanding common stock of GTC. He further testified that while GTC is today a well-managed company providing excellent service to its customers, the reorganization will result in GTC becoming part of a larger family of companies that have a deep and experienced management team and which are committed to the continuance and enhancement of the quality of service provided to GTC’s customers. Mr. Eudy testified that GTC will become part of a larger overall organization that will bring access to additional sources of capital and that GTC’s ability to perform its duties under the Act should be enhanced with the completion of the reorganization.

With respect to the requirement of Section 7-204(b)(1) that a proposed reorganization “will not diminish the utility’s ability to provide adequate, reliable, efficient, safe and least-cost public utility services”, Joint Applicants state, for the reasons just summarized, that “the reorganization will not diminish GTC’s ability to provide adequate, reliable, efficient, safe and least-cost telecommunications services to the customers it serves”. Mr. Eudy testified that the proposed reorganization will not affect the day-to-day business or operations of, or the provision of telecommunications services by, GTC. Mr. Eudy further testified that by GTC becoming a part of a larger organization, it will add to its financial strength, management depth and will result in additional abilities to maintain and enhance GTC’s ability to provide adequate, reliable, efficient, safe and least-cost telecommunications service within its serving area.

With respect to the requirements of Section 7-204(b)(2) that “the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility and its customers” and with respect to Section 7-204(b)(3) that “costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities, which are properly included by the utility for ratemaking purposes”, Joint Applicants state that the proposed reorganization will not result in the unjustified subsidization of non-utility activities by GTC or by its customers. Joint Applicants further state that the proposed reorganization will not impact the ability of GTC to fairly and reasonably allocate its costs and facilities between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by GTC in setting rates for non-competitive telecommunications services. Mr. Eudy testified that GTC will remain subject to the cost allocation requirements of 83 Ill. Adm. Code Part 712 as it is today.

With respect to the requirement of Section 7-204(b)(4) that “the proposed reorganization will not significantly impair the utility’s ability to raise the necessary

capital on reasonable terms or to maintain a reasonable capital structure,” Mr. Eudy testified that the proposed reorganization, which will result in GTC becoming a part of the larger American Broadband family of companies, should improve GTC’s access to capital on reasonable and less expensive terms.

With respect to Section 7-204(b)(5) that “the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities,” Joint Applicants state that following the completion of the proposed reorganization, GTC will continue to be subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of GTC and to the regulated telecommunications services that GTC provides. Mr. Eudy, on behalf of the Joint Applicants, specifically acknowledged that GTC will remain subject to all applicable laws, regulations, rules, decisions and policies governing GTC’s regulation by this Commission.

With respect to the requirements of Section 7-204(b)(6) that “the proposed reorganization is not likely to have a significant adverse affect on competition in those markets over which the Commission has jurisdiction,” Mr. Eudy testified that there is nothing in the proposed reorganization that could result in any adverse impacts on competition in the telecommunications markets over which the Commission has jurisdiction in the areas that are served by GTC.

Finally, with respect to the requirements of Section 7-204(b)(7), that “the proposed reorganization is not likely to result in any adverse rate impacts on retail customers,” Mr. Eudy testified that there will be no impact and there are no plans to increase retail rates in connection with the proposed reorganization.

Joint Applicants also address the requirements of Section 7-204(c) of the Act. With respect to the allocation of savings and costs resulting from the reorganization, Mr. Eudy testified that the Joint Applicants are not projecting that GTC will receive any savings nor do the Joint Applicants believe that GTC will incur any incremental increases in costs in its regulated intrastate operations as a result of the reorganization and the transactions described in the Joint Application. Mr. Eudy further testified that the Joint Applicants are not seeking in this proceeding, nor will they seek in any other proceeding, to recover any costs GTC may incur in accomplishing the proposed transactions.

By the Joint Application, authority is also sought from the Commission to maintain a portion of the books and records of GTC outside of the state of Illinois. Mr. Eudy testified that a portion of the books and records of GTC will be maintained in its corporate offices in Charlotte, North Carolina. He testified that it would create an economic burden to require GTC to maintain all of its books and records in Illinois and that Joint Applicants sought authority, pursuant to 83 Ill. Adm. Code Part 250, to maintain a portion of GTC’s books and records outside of the state of Illinois. In connection with this request, Mr. Eudy testified that if the Commission would authorize GTC to maintain a portion of its books and records outside of the state of Illinois, GTC

would be willing to reimburse the Commission for any expenses it may incur in examining the books and records at a location outside of the state of Illinois.

Mr. Kaufman in his Direct Testimony (Joint Applicants' Exhibit 2.0) indicated his support on behalf of GEI and GTC of Mr. Eudy's Direct Testimony and requested the Commission to grant the relief sought in the Joint Application. Mr. Kaufman testified that his family has had a controlling interest and has been in charge of operating the telephone company since 1970. Mr. Kaufman testified that he owns a 66.25% majority and controlling ownership interest in GEI. The minority shareholders are made up of members of his family and members of the family from whom they acquired the company in 1970. Mr. Kaufman testified that the decision to sell to the American Broadband family of companies was made in light of their experience, abilities and commitment to rural companies, such as GTC, and that American Broadband's commitment to retain existing Gridley personnel was a significant factor in the decision to sell to American Broadband. Mr. Kaufman testified that GTC has always been a community-oriented company providing a high quality of service to customers, and he testified that would continue to be the case under American Broadband ownership.

IV. COMMISSION STAFF POSITION

As described in greater detail in Staff's Direct Testimonies, (Staff Exhibit 1.0 through Staff Exhibit 5.0, inclusive), Staff has reviewed the Joint Application and the Direct Testimonies of Mr. Eudy and Mr. Kaufman, as well as Joint Applicants' Responses to various sets of Staff Data Requests, and based upon that review, concludes that the Joint Applicants' transfer of control and reorganization satisfies the requirements set forth in Sections 7-203 and 7-204 of the Act, subject to the Order containing certain Staff recommended findings and imposing certain conditions. As discussed in Section (V) hereafter, Joint Applicants, in their Rebuttal Testimony, have agreed to the conditions recommended by Staff and have agreed that it would be appropriate for the Commission's Order to contain both the findings recommended by Staff, as well as the agreed to conditions.

Staff witness Omoniyi testified that the Commission must determine that the Joint Applicants meet the requirements of Sections 7-203 and 7-204 of the Act in order to proceed with the reorganization plan. Specifically, Mr. Omoniyi noted that the Joint Applicants must demonstrate that they would meet or comply with the seven requirements set forth in Section 7-204(b) of the Act, as previously set forth. He reviewed the Joint Application and the Joint Applicants' Direct Testimony to determine whether the companies' transfer of control and reorganization would meet or comply with the requirements set forth in Section 7-203 and Section 7-204(b)(1), Section 7-204(b)(5) and Section 7-204(b)(6). Mr. Omoniyi recommended that the Commission approve the Joint Application.

With regard to Section 7-204(b)(1), Mr. Omoniyi testified that this Section mandates that the Commission must find that the proposed reorganization will not diminish GTC's ability to provide adequate, reliable, efficient, safe and least-cost public

utility service. Mr. Omoniyi observed that as an incumbent local exchange carrier in Central Illinois, GTC plays a significant role in terms of available choices for the community it serves. In that regard, Mr. Omoniyi testified that the Commission will want to ensure that GTC maintains its current status as a “well-managed incumbent local exchange carrier.” Mr. Omoniyi testified that Joint Applicants’ assertions that the reorganization transactions will add to the “financial strength, management depth and additional abilities to maintain and enhance GTC’s ability to provide adequate, reliable, efficient, safe and least-cost telecommunications service within GTC’s serving area” augur well for Gridley’s performance. The service quality condition hereinafter discussed in connection with the Direct Testimony of Staff witnesses Hardas and McClerren will help assure compliance with Section 7-204(b)(1).

With regard to Section 7-204(b)(5), Mr. Omoniyi testified that the Commission is required to find that the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. Mr. Omoniyi testified that GTC must abide by all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois telecommunications carriers. He observed that the Joint Applicants had affirmatively stated that they would comply with the requirements of Section 7-204(b)(5). Mr. Omoniyi testified that this commitment assures the Commission that, upon approval, GTC will continue to fulfill its obligations as required and that since there is no indication that GTC has violated any existing regulations, the Commission could expect that the proposed reorganization would not adversely alter GTC’s current record of compliance.

With regard to Section 7-204((b)(6), Mr. Omoniyi testified that the Commission must find that the reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction. Mr. Omoniyi went on to testify that this requires examining the proposed reorganization through a two-step analysis: (1) will the proposed reorganization adversely affect GTC’s competitiveness in the markets it services; and (2) would the proposed reorganization adversely affect the opportunity for entry into any of these local exchange markets by competitive carriers.

In examining these issues, Mr. Omoniyi testified that he considered three factors: (1) the market conditions and characteristics of the affected markets; (b) GTC’s management goals upon the conclusion of the reorganization; and (c) the existence of similarly situated competitors. Mr. Omoniyi testified that the proposed reorganization should not result in any impediment to GTC’s competitiveness in the marketplace and that it may have the potential of making GTC more responsive to market trends and developments. Mr. Omoniyi went on to testify that no significant administrative changes were being undertaken as a part of the reorganization and that critical management practices would remain unchanged and there would be no change in the day-to-day operations of GTC.

Mr. Omoniyi concluded that all of these factors indicate that the reorganization will not diminish GTC’s competitiveness in the marketplace. He also testified that there

is no indication that the reorganization would be a barrier to the entry of any efficient competitive carrier and that there was no indication that GTC has prevented the entry of any competing carriers. Mr. Omoniyi testified that it was his opinion that the proposed reorganization will not hinder competition and could actually spur competition, and as a result, the proposed reorganization is in compliance with Section 7-204(b)(6).

Mr. Omoniyi also testified that the Joint Application meets the requirements of Section 7-203 of the Act requiring Commission approval for the transactions affecting the “right to own, operate, manage or control any public utility.”

Staff witness Dianna Hathhorn addressed the Joint Applicants’ reorganization to determine compliance with Sections 7-204(b)(2) and 7-204(b)(3) of the Act. She also addressed the statutory criteria contained in Section 7-204(c) of the Act and the Joint Applicants’ request to maintain a portion of GTC’s books and records outside of the state of Illinois pursuant to 83 Ill. Adm. Code 250.

With regard to Section 7-204(b)(2), Ms. Hathhorn testified that the Commission must find that the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers. Ms. Hathhorn indicated that she had reviewed the Joint Application and Mr. Eudy’s Direct Testimony concerning Section 7-204(b)(2) criteria and further testified that in response to Staff Data Request DLH-1.03, the Joint Applicant had indicated that the reorganization would result in no new affiliate transactions between GTC and MH, ABC, ABBH and/or ABAC. Ms. Hathhorn further testified that for that reason, the current Management and Operating Agreement between GTC and GEI, which will remain in place after the reorganization, is adequate to ensure that the proposed reorganization will not result in any unjustified subsidization and recommended that the Commission find that the Joint Applicants are in compliance with Section 7-204(b)(2).

In connection with the requirements of Section 7-204(b)(3), Ms. Hathhorn testified that the Commission must find that the costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities, which are properly included by the utility for ratemaking purposes. Ms. Hathhorn testified that GTC will remain subject to the Commission’s cost allocation requirements of 83 Ill. Adm. Code 712 and that these guidelines require GTC to be able to identify its costs and facilities for ratemaking purposes. Ms. Hathhorn recommended that the Commission find that the Joint Applicants are in compliance with Section 7-204(b)(3) of the Act.

Ms. Hathhorn testified that in Section 7-204(c) the Commission shall not approve a reorganization without ruling on: (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated. Ms. Hathhorn indicated that Mr. Eudy, in response to Staff Data Request DLH-2.02, had stated that the Joint Applicants do not anticipate that any savings will occur as a result of the

reorganization but went on to indicate that the Joint Applicants agree that should any savings occur, they will be reflected in future rate filings and rate proceedings of GTC. Ms. Hathhorn further testified that in response to Staff Data Request DLH-2.03, the Joint Applicants had agreed not to seek in this proceeding, nor any future proceedings, the recovery of any costs from Section 2.2 of the Stock Purchase Agreement that are incurred by GTC or GEI in connection with the transactions.

With regard to Joint Applicants' request for a waiver pursuant to 83 Ill. Adm. Code 250 to maintain a portion of GTC's books and records outside of the state of Illinois, Ms. Hathhorn recommended that such a request be granted since the Joint Applicants had agreed to reimburse the Commission for any expenses that may occur in examining the books and records at a location outside of the state of Illinois. In connection with her testimony on this issue, Ms. Hathhorn also indicated that the Joint Applicants, in response to Staff Data Requests DLH-1.04, had indicated that: "The Commission Staff will be granted access to all books, accounts, records and personnel of Gridley Telephone Company and all of its utility and non-utility parent, sister and subsidiary companies. Access will also be granted to independent auditors' work papers to the extent permitted by the rules and policies of the independent auditors."

Staff witness Mark A. Hanson addressed the Joint Applicants' reorganization to determine compliance with Section 7-204(b)(7). Mr. Hanson testified that this Section requires that the Commission find that the proposed reorganization is not likely to result in any adverse rate impacts on retail customers. Mr. Hanson observed that Joint Applicants' witness Mr. Eudy stated in his Direct Testimony that the Joint Applicants do not intend on raising retail rates at this time and went on to further state that except for generic changes, such as changes in intercarrier compensation, access charge reform and universal service, the Joint Applicants are willing to commit to a freeze on the rates for non-competitive services for a period of one year. Mr. Hanson testified that in several reorganizations of rural incumbent telecommunications carriers and Orders entered over the past two years that the Commission had found that a freeze on the retail rates of non-competitive services for a period of one year satisfies the requirements of Section 7-204(b)(7). Mr. Hanson recommended that the Commission's Order contain such a condition in connection with finding that the requirements of Section 7-204(b)(7) were met and that the condition should not contain the caveats for a rate freeze as suggested by Mr. Eudy.

Staff witness Phil Hardas addressed the Joint Applicants reorganization to determine compliance with Section 7-204(b)(4) of the Act. Mr. Hardas testified that "the Commission must find that the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure." Mr. Hardas testified that based upon his analysis, GTC currently generates adequate cash flow to cover capital expenditures and carries zero long-term debt. Mr. Hardas testified that after the reorganization, GTC would obtain external capital from ABAC, whose capital structure is projected to become highly leveraged with debt. He indicated that during adverse business conditions, he was concerned that ABAC might find it necessary to reduce expenditures at GTC that are

needed to maintain service quality to increase the cash available to ABAC to service its debt.

As a result, Mr. Hardas recommended that the Commission impose a condition that restricts affiliates' access to cash that GTC generates to ensure that GTC retains sufficient cash to provide reasonable and adequate service at reasonable cost. He indicated that in the condition, GTC would be prohibited from paying dividends to its affiliates or otherwise transferring cash to its affiliates through loans, advances, investments or other means that would divert GTC's moneys, property or other resources to any business or enterprise that is not essential to or is not directly connected with the provision of noncompetitive telecommunications services if GTC fails to meet or exceed service quality standards that are described in Staff witness McClerren's testimony. While proposing that the Commission's Order contain the condition that he and Mr. McClerren are jointly sponsoring, Mr. Hardas observed that GTC's annual report to the Commission indicates that GTC has generated more cash than it needed for capital expenditures and that GTC should not need to raise capital so long as it retains sufficient internally generated cash for its own operations.

With regard to GTC's ability to maintain a reasonable capital structure, Mr. Hardas testified that a reasonable capital structure would permit a utility to raise capital under most market conditions and would result in a reasonable overall cost of capital. Mr. Hardas testified that GTC has no long term debt and is 100% common equity financed. While observing that capital structures without any debt are not optimal from a cost standpoint, Mr. Hardas testified that when setting rates for a subsidiary such as GTC that relies on a parent company to supply external capital, the Commission typically uses that parent company's capital structure, and that while ABAC's capital structure has a relatively high portion of debt, GTC generates more cash than is needed for capital expenditures and should not need to raise capital so long as it retains sufficient internally generated cash for its operations. Mr. Hardas observed that none of the Joint Applicants, or any of their affiliates, had ratings from any of the credit rating agencies.

As indicated above, Mr. Hardas recommended that the Commission impose a condition that would prohibit GTC from transferring cash to the other Joint Applicants in the event service quality degrades as described in Staff witness McClerren's testimony, and that with that condition, he recommended that the Commission find that the proposed reorganization meets the requirements of Section 7-204(b)(4).

Staff witness Samuel S. McClerren addressed potential operational impacts of the reorganization and recommended key service quality measures that the Commission should monitor to ascertain that service quality does not deteriorate as a result of the reorganization. Mr. McClerren indicated that the Joint Applicants addressed the issue of the impact of the reorganization on GTC's service quality in the Direct Testimony of Mr. Eudy. He indicated that Mr. Eudy had stated that the proposed reorganization will not affect the day-to-day business operations or provisions of telecommunications services by GTC and had stated that GTC, by being a part of a

larger organization, will add financial strength, management debt and additional abilities to maintain and enhance GTC's ability to provide adequate, reliable, efficient, safe and least-cost telecommunications service. Mr. McClerren testified that he had reviewed GTC's reports on its service quality to the Commission that were filed on a regular basis as required by 83 Ill. Adm. Code Part 730 for the quarters ending September 30, 2004, December 31, 2004, March 31, 2005 and June 30, 2005. Mr. McClerren testified that the level of service quality provided by GTC for those periods had been exceptional, far exceeding the minimum requirements of Code Part 730.

Mr. McClerren testified that at least on a theoretical basis a reorganization, such as the one that is being proposed, could provide an incentive for ABBH to reduce operating budgets or planned levels of investment. McClerren observed that the Commission had demonstrated a strong interest in matters of service quality in previous dockets involving reorganizations that might provide an economic incentive for a local exchange carrier to reduce levels of service quality. Mr. McClerren recommended that the Commission use the following standards in developing a service quality condition, which if not met would result in the actions described by Staff witness Hardas becoming applicable. Mr. McClerren recommended the following service quality standards:

STANDARDS:

Toll & Assistance Answer Time (Part 730.510(a)(1)(A)):	10 seconds
Information Answer Time (Part 730.510(a)(1)(B)):	10 seconds
Business Office Answer Time (Part 730.510(b)(1)):	60 seconds
Repair Office Answer Time: (Part 730.510(b)(1)):	60 seconds
Interruptions of Service over 24 Hours (Part 730.535(a)):	95%
Installation Requests over 5 Business Days (Part 730.540(a)):	95%
Trouble Reports per 100 Lines (Part 730.545(a)):	2
Repeat Trouble Reports (Part 730.545(c)):	10%
Percent Repeat Installation Troubles	

(Part 730.545(f)):

10%

V. JOINT APPLICANTS' REBUTTAL TESTIMONY

Mr. Eudy and Mr. Kaufman presented Rebuttal Testimony on behalf of the Joint Applicants (Joint Applicants' Exhibit 3.0 and Joint Applicants' Exhibit 4.0, respectively). Mr. Eudy testified that it was his understanding, based upon his review of the testimony of the five Staff witnesses, that Staff was recommending that the approvals sought by the Joint Applicants should be granted by the Commission and was recommending that the Commission make the required findings under the statutory sections but that their recommendations are, in part, based upon the Commission Order approving the transactions containing certain conditions. Mr. Eudy observed that the conditions recommended by the Staff in their testimony appear to be similar or identical to certain conditions contained in recent condition Orders approving transactions under the criteria contained in Sections 7-203 and 7-204 of the Act. Mr. Eudy indicated that the recent Commission dockets and Orders that he was referring to are Docket Nos. 04-0299, 04-0793 and 05-0013.

In responding to the testimony of Staff witness Omoniyi, Mr. Eudy observed that Mr. Omoniyi's ultimate recommendation was that the Commission approve the Joint Application for reorganization, and that while Mr. Omoniyi did not recommend the imposition of any conditions in his testimony, he had observed that the Commission must find that GTC will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. Mr. Omoniyi noted that in Mr. Eudy's Direct Testimony GTC had affirmatively stated that it would comply with the requirements of Section 7-204(d)(5). On behalf of the Joint Applicants, Mr. Eudy testified that it would be appropriate for the Commission to contain an affirmative finding in an Order granting the requested approvals to state that: "Gridley Telephone Company will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities." Mr. Eudy noted that a similar finding was contained in the Commission's Order in Docket No. 05-0013.

In responding to the Direct Testimony of Staff witness Hathhorn, Mr. Eudy testified that Ms. Hathhorn had proposed no conditions in connection with her recommendation and found that the Joint Applicants are in compliance with Section 7-204(b)(2) and Section 7-204(b)(3). Mr. Eudy testified that in connection with Ms. Hathhorn's recommendation with regard to compliance with Section 7-204(b)(3) that she had observed that GTC will remain subject to the Commission's cost allocation requirements of 83 Ill. Adm. Code 712. Mr. Eudy testified that the Joint Applicants would have no objection to the Commission Order containing the following condition similar to condition (5)(b) contained in the Commission's Order in Docket No. 05-0013. That condition would provide as follows: "GTC will continue to comply with 83 Ill. Adm. Code 712--Cost Allocation For Small Local Exchange Carriers."

In responding to Ms. Hathhorn's recommendations with regard to Section 7-204(c), Mr. Eudy noted that Ms. Hathhorn recommended that the Commission accept the Joint Applicants' proposal regarding the requirements of Section 7-204(c) that: "a) any savings that result from the reorganization will be reflected in future rate filings and rate proceedings of GTC; and b) no costs incurred in accomplishing the proposed reorganization will be eligible for recovery in a future rate proceeding." Mr. Eudy testified that the Joint Applicants agreed with Ms. Hathhorn's recommendations and agreed that it would be appropriate for the Commission's Order to contain findings similar to Findings (6) and (7) appearing on page 23 of the Commission's Order in Docket No. 05-0013. Mr. Eudy testified that the Joint Applicants would agree that the following findings are appropriate for inclusion in the Commission's Order in this docket:

The allocation of any savings GTC obtains from the proposed reorganization will flow through to the costs associated with the regulated intrastate operations for consideration in setting rates by the Commission;

The Joint Applicants will not be allowed to recover any costs incurred in accomplishing the proposed reorganization in future rate proceedings.

Mr. Eudy testified that Ms. Hathhorn had recommended that the requested authority be granted by the Commission to allow GTC to maintain a portion of its books and records outside of the state of Illinois pursuant to 83 Ill. Adm. Code 250. Mr. Eudy noted that Ms. Hathhorn's recommendation is, in part, based upon GTC's willingness to reimburse the Commission for any expenses it may incur in examining the books and records at a location outside of the state of Illinois. Mr. Eudy reaffirmed Joint Applicants' commitments to reimburse the Commission for any such expenses. Mr. Eudy noted that in connection with Ms. Hathhorn's recommendation, she had referenced Joint Applicants' response to Staff Data Request DLH-1.04. Mr. Eudy testified that the Joint Applicants would agree that it would be appropriate for a Commission Order granting the requested relief to contain a condition consistent with the Data Request Response, which condition would be similar to a condition contained in Finding (5)(a) in the Commission's Order in Docket No. 05-0013. Mr. Eudy proposed that that condition would state as follows:

The Commission Staff will be granted access to all books, accounts, records and personnel of Gridley Telephone Company and all of its utility and non-utility parent, sister and subsidiary companies. Access will also be granted to independent auditors' work papers to the extent permitted by the rules and policies of the independent auditors.

Mr. Eudy testified that Mr. Hanson had recommended that the Commission find that the proposed transactions met the requirements of Section 7-204(b)(7) if the Commission's Order contained a condition to assure compliance with that statutory criteria and that the condition should provide for a rate freeze on non-competitive services for one year. Mr. Eudy testified that the Joint Applicants were in agreement that a Commission Order granting the requested relief contain such a condition and that

it would be similar to a condition contained in the Commission's Order in Docket No. 05-0013. On behalf of Joint Applicants, Mr. Eudy proposed that the Commission's Order contain the following condition in response to Mr. Hanson's recommendation: "Gridley Telephone Company will be prohibited from increasing any of its tariff retail rates for non-competitive services for one year after the date upon which the Stock Purchase Agreement is closed."

Mr. Eudy testified that Mr. Hardas had recommended that the Commission impose a condition that would prohibit GTC from transferring cash to the other Joint Applicants in the event service quality degrades as discussed by Staff witness McClerren. Mr. Eudy indicated that Mr. Hardas had recommended that the proposed reorganization, subject to such to a service quality condition, meets the requirements of Section 7-204(b)(4).

Mr. Eudy testified that representatives of the Joint Applicants that had communications with the Staff with regard to the terms of a service quality condition would be responsive to the recommendations of Mr. Hardas and Mr. McClerren. Mr. Eudy observed that having the service quality condition included within the Commission Order would not only provide further assurances concerning the transactions meeting the requirements of Section 7-204(b)(4) as discussed by Mr. Hardas but would also provide further assurances concerning the transactions meeting the requirements of Section 7-204(b)(1). Based upon the discussions with Staff, Mr. Eudy testified that the Joint Applicants were proposing the following service quality condition, which he noted was similar to a condition contained in the Commission Order in Docket No. 05-0013. The Joint Applicants' proposed service quality condition is as follows:

GTC will be prohibited from paying dividends to its parent company, Gridley Enterprises, Inc. or otherwise transferring cash to any of the Joint Applicants through loans, advances, investment or other means that would divert GTC's moneys, property or other resources that is not essentially or directly connected with the provision of noncompetitive telecommunications service if GTC fails to meet or exceed the standards set forth below for a majority (5 of 9) of the following service quality Standards of 83 Illinois Administrative Code Part 730, Standards of Service for Local Exchange Telecommunications Carriers:

(i) STANDARDS:

Toll & Assistance Answer Time (Part 730.510(a)(1)(A)):	10 seconds
Information Answer Time (Part 730.510(a)(1)(B)):	10 seconds
Business Office Answer Time (Part 730.510(b)(1)):	60 seconds

Repair Office Answer Time (Part 730.510(b)(1)):	60 seconds
Interruptions of Service over 24 Hours (Part 730.535(a)):	95%
Installation Requests over 5 Business Days (Part 730.540(a)):	95%
Trouble Reports per 100 Lines (Part 730.545(a)):	2
Repeat Trouble Reports (Part 730.545(c)):	10%
Percent Repeat Installation Troubles (Part 730.545(f)):	10%

- (ii) **MEASUREMENTS:** Measurements will commence on the first day of the month following the closing of the Stock Purchase Agreement. Measurements will not be taken and will not be included in determining whether GTC has met this service quality condition during any period of time in which GTC is in an "Emergency Situation" as defined in 83 Ill. Adm. Code Part 730.105.
- (iii) **ANNUAL REPORTS:** GTC shall file an annual report with the Chief Clerk's Office and posted in this docket. The annual report will be filed by March 31 of each year for the preceding year. With the annual report, GTC shall list the standards set by the Commission for each service quality measure and GTC's actual performance for each annual period. The annual report shall present the actual performance data for each month after the date that measurements are to be taken as set forth above.
- (iv) **DURATION OF CONDITION:** This service quality condition will remain in effect for three (3) years from the date of the closing of the Stock Purchase Agreement. Provided, however, that should GTC fail to meet or exceed the service quality standard contained in this condition for a majority (5 of 9) of said standards during any year in the first three years, this condition shall remain in effect for an additional three years."

Mr. Eudy testified that it was his belief that, if the Staff concurred with the language contained in the proposed conditions and findings, there were no outstanding unresolved issues with regard to the approval of the Joint Application between Joint Applicants and Staff.

Mr. Kaufman, on behalf of GEI and GTC, testified that he agreed with and supported Mr. Eudy's Rebuttal Testimony, including Mr. Eudy's recommendations that the Order contain the findings and conditions set forth in Mr. Eudy's Rebuttal Testimony.

VI. STAFF'S RESPONSE TO JOINT APPLICANTS' REBUTTAL TESTIMONY AND PROPOSED CONDITIONS

At the October 12, 1005 hearing, Staff counsel indicated that Staff was in agreement with the proposed findings and conditions as outlined in the Rebuttal Testimony of the Joint Applicants and that Staff had no outstanding issues with the Joint Applicants with regard to the approvals requested in the Joint Application.

VII. COMMISSION ANALYSIS AND CONCLUSION

Based upon a review of the Joint Application, the testimony of Mr. Eudy and Mr. Kaufman, on behalf of the Joint Applicants, and the testimony of the Commission Staff, and taking into account adoption of the proposed conditions described herein, the Commission concludes that the proposed reorganization satisfies the requirements of Sections 7-204(b) and 7-204(c) of the Act, and that the proposed reorganization should be approved. Approval should also be granted pursuant to Section 7-203. Pursuant to Section 13-402 of the Act and 83 Ill. Adm. Code 250, GTC should be allowed to keep portions of its books and records outside of the state of Illinois.

The Commission finds that the proposed reorganization will not adversely affect GTC's ability to perform its duties under the Act (7-204(b)), and that the proposed reorganization will not diminish GTC's ability to provide adequate, reliable, efficient, safe and least-cost public utility service (7-204(b)(1)). Based on the record, the Commission also finds that the proposed reorganization will not result in the unjustified subsidization of non-carrier activities by GTC or its customers (7-204(b)(2)), and that costs and facilities will be fairly and reasonably allocated between carrier utility and non-carrier activities in such a manner that the Commission may identify those costs and facilities which are properly included by GTC for ratemaking purposes (7-204(b)(3)). The Commission finds further that the proposed reorganization will not significantly impair GTC's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure (7-204(b)(4)); that GTC will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities (as applicable to local exchange telecommunications carriers) (7-204(b)(5)); that the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction (7-204(b)(6)); and that the proposed reorganization is not likely to result in any adverse rate impacts on retail customers (Section 7-204(b)(7)).

With respect to the requirements of Section 7-204(c), the record shows that it is unlikely that GTC will experience any identifiable savings or incur any significant costs as a result of the proposed reorganization. GTC has not sought and shall not seek to recover any costs of the reorganization from its customers for noncompetitive telecommunications services.

The Commission also finds that the four conditions described in Section V. of this Order are reasonable and should be adopted and included in the Order. These conditions will help ensure that the requirements of Section 7-204(b)(1) through (7) will be met in connection with and as a result of the reorganization.

VIII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Gridley Telephone Company is a telecommunications carrier as defined in Section 13-202 of the Act, and is providing telecommunications services as defined in Sections 13-203 and 13-204 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter thereof;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the evidence and are hereby adopted as findings of fact;
- (4) for the reasons set forth in the prefatory portion of this Order and in light of the conditions described in the prefatory portion of this Order, the proposed reorganization will not adversely affect Gridley Telephone Company's ability to perform its duties under the Act and the proposed reorganization meets the criteria as set forth in Section 7-204 of the Act in that:
 - a) the proposed reorganization will not diminish Gridley Telephone Company's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
 - b) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by Gridley Telephone Company or its respective customers;
 - c) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities, which are

properly included by the respective utilities for rate making purposes;

- d) the proposed reorganization will not significantly impair Gridley Telephone Company's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
 - e) Gridley Telephone Company will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;
 - f) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets served by Gridley Telephone Company over which the Commission has jurisdiction; and
 - g) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers of Gridley Telephone Company;
- (5) the following conditions will be imposed in connection with the reorganization:
- a) the Commission Staff will be granted access to all books, accounts, records and personnel of Gridley Telephone Company and all of its utility and non-utility parent, sister and subsidiary companies. Access will also be granted to independent auditors' working papers to the extent permitted by the rules and policies of the independent auditors;
 - b) Gridley Telephone Company will continue to comply with 83 Ill. Adm. Code Part 712--Cost Allocation For Small Local Exchange Carriers;
 - c) Gridley Telephone Company will be prohibited from increasing any of its tariff retail rates for non-competitive services for one year after the date upon which the Stock Purchase Agreement is closed; and
 - d) GTC will be prohibited from paying dividends to its parent company, Gridley Enterprises, Inc., or otherwise transferring cash to any of the Joint Applicants through loans, advances, investment or other means that would divert GTC's moneys, property or other resources that is not essentially or directly connected with the provision of noncompetitive telecommunications service if GTC fails to meet or exceed the standards set forth below for a majority (5 of 9) of the following service quality Standards of 83 Illinois

Administrative Code Part 730, Standards of Service for
Local Exchange Telecommunications Carriers:

(i) STANDARDS:

Toll & Assistance Answer Time (Part 730.510(a)(1)(A)):	10 seconds
Information Answer Time (Part 730.510(a)(1)(B)):	10 seconds
Business Office Answer Time (Part 730.510(b)(1)):	60 seconds
Repair Office Answer Time (Part 730.510(b)(1)):	60 seconds
Interruptions of Service over 24 Hours (Part 730.535(a)):	95%
Installation Requests over 5 Business Days (Part 730.540(a)):	95%
Trouble Reports per 100 Lines (Part 730.545(a)):	2
Repeat Trouble Reports (Part 730.545(c)):	10%
Percent Repeat Installation Troubles (Part 730.545(f)):	10%

(ii) MEASUREMENTS: Measurements will commence on the first day of the month following the closing of the Stock Purchase Agreement. Measurements will not be taken and will not be included in determining whether GTC has met this service quality condition during any period of time in which GTC is in an "Emergency Situation" as defined in 83 Ill. Adm. Code Part 730.105.

(iii) ANNUAL REPORTS: GTC shall file an annual report with the Chief Clerk's Office and posted in this docket. The annual report will be filed by March 31 of each year for the preceding year. With the annual report, GTC shall list the standards set by the Commission for each service quality measure and GTC's actual performance for each annual

period. The annual report shall present the actual performance data for each month after the date that measurements are to be taken as set forth above.

- (iv) **DURATION OF CONDITION:** This service quality condition will remain in effect for three (3) years from the date of the closing of the Stock Purchase Agreement. Provided, however, that should GTC fail to meet or exceed the service quality standard contained in this condition for a majority (5 of 9) of said standards during any year in the first three years, this condition shall remain in effect for an additional three years.
- (6) the allocation of any savings Gridley Telephone Company attains from the proposed reorganization will flow through to the costs associated with the regulated intrastate operations for consideration in setting rates by the Commission;
- (7) the Joint Applicants will not be allowed to recover any costs incurred in accomplishing the proposed reorganization in future rate proceedings;
- (8) all of the transactions for which approval are sought, including the proposed reorganization and proposed transfer of control of Gridley Telephone Company, are reasonable, subject to the conditions set forth in this Order;
- (9) the relief requested under Sections 7-203 and 7-204 of the Act shall be granted as hereinafter set forth, subject to the conditions imposed by this Order;
- (10) pursuant to Section 13-402 of the Act and 83 Ill. Adm. Code 250, Gridley Telephone Company should be allowed to keep portions of its books and records outside of the state of Illinois; pursuant to Section 5-106 of the Act. Gridley Telephone Company should be liable for, and upon proper invoice of the Commission, should promptly reimburse the Commission for reasonable costs and expenses associated with the audit or inspection of any books, accounts, and records kept outside of the state of Illinois;
- (11) Joint Applicants' Proprietary Attachments 1.1 and 1.2 should be exempt from public disclosure for a period of five (5) years from the date this Order is entered; and
- (12) the prayer of the Joint Application may reasonably be granted and the public will be inconvenienced thereby.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that consent and approval are granted to Joint Applicants to carry out all actions necessary to effectuate the reorganization and transfer of control of Gridley Telephone Company in a manner consistent with the terms of Joint Applicants' Proprietary Attachment 1.1.

IT IS FURTHER ORDERED that the Joint Applicants shall comply with the four conditions referenced in Finding (5) and set forth in the prefatory portion of the Order.

IT IS FURTHER ORDERED that Gridley Telephone Company is authorized to keep its books and records outside of the State of Illinois as set forth in Finding (9).

IT IS FURTHER ORDERED that Joint Applicants' Proprietary Attachments 1.1 and 1.2 shall be exempt from public disclosure for a period of five (5) years from the date this Order is entered.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 25th day of October, 2005.

(SIGNED) MARTIN R. COHEN

Chairman